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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/528,761 | 03/17/2000 | Jason T. Murar | VEI0313PUS | 5009 |

7590

11/26/2002

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EXAMINER

LEE, EDMUND H

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 11/26/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/528,761

Applicant(s)

MURAR ET AL.

Examiner

EDMUND H LEE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The Terminal Disclaimers, with respect to USPN 6428738 and USPN 6082762, filed 9/13/02 have been reviewed and determined proper. They have been recorded.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preisler et al (USPN 6082762) in view of Smith (USPN 6187233) and Nakamura et al (USPN 5614146) as set forth in the previous Office action mailed 7/8/02.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Preisler et al (USPN 6082762) in view of Smith (USPN 6187233) and Nakamura et al (USPN 5614146) as set forth in the previous Office action mailed 7/8/02.

5. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preisler et al (USPN 6082762) in view of Smith (USPN 6187233) and Nakamura et al (USPN 5614146) as set forth in the previous Office action mailed 7/8/02.

6. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preisler et al (USPN 6082762) in view of Smith (USPN 6187233) and Nakamura et al (USPN 5614146) as set forth in the previous Office action mailed 7/8/02.

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7. Applicants' arguments filed 9/13/02 have been fully considered but they are not persuasive. Applicants argue that Preisler et al is disqualified as prior art through 35 USC 102(e) in the 35 USC 103(a) rejection set forth in the previous Office action mailed 7/8/02 because Preisler et al was "in fact assigned to the Assignee of the present application by virtue of the Assignment recorded on August 2, 2000 at Reel 011007 and Frame 0337." According to MPEP 706.02(I)(3), a prior art reference through 35 USC 102(e) in a 35 USC 103(a) is disqualified if "the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, *at the time the invention was made*, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s)." (emphasis added) Here, Applicants have failed to make a statement having the required effect. Thus, the 35 USC 103(a) rejections set forth in the previous Office action mailed 7/8/02 have not been overcome and remain applicable.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

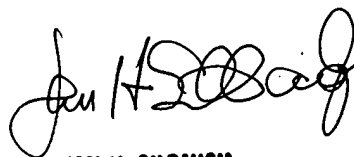
9. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Edmund Lee whose telephone number is (703) 305-4019. The examiner can normally be reached on Monday-Wednesday and Friday from 8:00 AM to 4:00 PM. The fax number for Examiner Edmund Lee is (703) 872-9615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan H. Silbaugh, can be reached on (703) 308-3829.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

EHL

November 22, 2002


JAN H. SILBAUGH
SUPERVISORY PATENT EXAMINER
ART UNIT ~~17~~1732

11/25/02